

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF TRUSTEES
OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the PERA Salary
Determinations Affecting Retired and
Active Employees of the City of Duluth
Allen Johnson, et al., Petitioners

ORDER

Carla Heyl, Assistant Attorney General,¹ appears on behalf of the staff of the Public Employees Retirement Association (PERA). Elizabeth Storaasli, Storaasli, Knutson & Pommerville, Ltd., appears on behalf of a group of Petitioners, all retired Duluth firefighters (Represented Petitioners).² Petitioner Bryan F. Brown, Attorney at Law, appears *pro se*, as do the remaining Petitioners in this proceeding (Unrepresented Petitioners).

By Order issued on July 21, 2010, Administrative Law Judge Bruce H. Johnson (the ALJ) denied the parties' cross-motions for summary disposition and directed counsel to consult with one another, with the ALJ, and with the Duluth City Clerk for the purpose of scheduling a date for the evidentiary hearing.

In their respective motions for summary disposition and supporting documentation, the Represented Parties and Mr. Brown asserted that no genuine issue of material fact existed. However, the ALJ concluded that there was a genuine issue of material fact regarding the tax treatment of amounts that the City paid on the Petitioners' behalf for deferred compensation accounts or for family medical insurance during the period 1995 through September 2008. The ALJ therefore specified that the hearing would be confined to the presentation of evidence relevant to that issue.

Counsel for the represented parties subsequently advised the ALJ that arrangements have been to conduct the evidentiary hearing beginning at 9:30 a.m., on Thursday, September 30, 2010, through Tuesday, October 5, 2010, if necessary.

Based upon all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

¹ Ms. Heyl replaced Assistant Attorney Jon K. Murphy as counsel for PERA after the earlier proceedings on the parties' cross-motions for summary disposition.

² Specifically, Petitioners Paul Ostman, Doug Michog, John Edwards, Mark Behning, Terry Purcell, Doug Belanger, Dave Salveson, Anne Peterson, L. J. Harvey, William L. Johnson, and Dave Wedin.

ORDER

(1) This matter is set for hearing in the Duluth City Council Chamber, Third Floor, Duluth City Hall, 411 West First Street, Duluth, MN 55802, beginning at 9:30 a.m. on Thursday, September 30, 2010. The hearing will continue through Friday, October 1, 2010, and on, October 4 and 5, 2010, if necessary.

(2) The parties must exchange lists of witnesses whom they expect to call to testify at the hearing no later than Monday, September 14, 2010.

(3) The Represented Parties must also exchange copies of exhibits that they intend to tender as evidence no later than Monday, September 14, 2010. The Represented Parties must also submit copies of their exhibits to the ALJ for posting on the website established for this proceeding: <http://www.oah.state.mn.us/cases/360020809-PERA-Duluth/index.html>. Any Unrepresented Parties seeking to introduce exhibits relevant to the matters at issue must submit them to the ALJ for rulings on admissibility on or before the same date. Exhibits received from Unrepresented Parties that the ALJ determines to be admissible will also be posted on that website.

(4) The PERA Staff shall pre-mark its exhibits sequentially with numbers 1 through 100. The Represented Petitioners shall pre-mark their exhibits sequentially with numbers 101 through 200. The ALJ will assign numbers 201 through 300 to any exhibits tendered by Unrepresented Parties that the ALJ determines to be admissible as evidence.

(4) At the beginning of the hearing, the Administrative Law Judge will entertain any foundational objections to exhibits and receive as evidence those to which no objection is made, reserving to the parties the right to move during the hearing to strike all or parts of exhibits based on objections to relevance, competence, or claims of privilege.

(5) The parties shall file and serve any motions *in limine* or other preliminary hearing motions on or before Monday, September 21, 2010.

Dated: August 11, 2010

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge